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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/764,807 | 01/16/2001 | Roger Knobbe | NA11P070/99.067.01 | 7729 |

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EXAMINER

CANGIALOSI, SALVATORE A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2661

DATE MAILED: 06/15/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/764,807

Applicant(s)

KNOBBE ET AL.

Examiner

Salvatore Cangialosi

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

2. Claims 1-18 are rejected under 35 U.S.C. § 103 as being unpatentable over Patel et al in view of Borella et al.

Regarding claim 1, Patel et al (See Fig. 3, Cols 3 and 4 , and claims 1-3) disclose a means for measuring network latency employing data packets , correlating same and calculating latency based on the data packets substantially as claimed. The differences between the above and the claimed invention are the specific correlation and calculation. Borella et al (See Fig. 2, element 24, and claim 4) shows explicit timestamp packet between two network devices. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement Patel et al because they are well known and conventional functional equivalents of network latency

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measurement in the prior art. Regarding the timestamp limitations of claim 2, both Patel et al or Borella et al show timestamps which are processed must obviously be stored in a register or memory. Regarding the packet limitations of claim 3, both Patel et al or Borella et al show packets at various stages of transit which are the functional equivalents of the claim. Regarding the checksum limitations of claim 4, both Patel et al or Borella et al would obviously include standard checksum which are always compared in error correction. Regarding the packet limitations of claim 5, both Patel et al or Borella et al show plural packets compared at various stages of transit which are the functional equivalents of the claim. Regarding the address limitations of claim 6, both Patel et al or Borella et al show packets that must have address which are compared at receipt which are the functional equivalents of the claim. Regarding claim 7, Patel et al (See Fig. 3, Cols 3 and 4 , and claims 1-3) disclose a method for measuring network latency employing data packets , correlating same and calculating latency based on the data packets substantially as claimed. The differences between the above and the claimed invention are the specific correlation and calculation. Borella et al (See Fig. 2, element 24, and claim 4) shows explicit timestamp packet between two network devices. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement Patel et al because they are well known and conventional functional equivalents of

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network latency measurement in the prior art. Regarding the checksum limitations of claim 8, both Patel et al or Borella et al would obviously include standard checksum which are always compared in error correction. Regarding the packet limitations of claim 9, both Patel et al or Borella et al show plural packets compared at various stages of transit which are the functional equivalents of the claim. Regarding the packet limitations of claim 10, both Patel et al or Borella et al show plural packets compared at various stages of transit which are the functional equivalents of the claim. Regarding the address limitations of claim 11, both Patel et al or Borella et al show packets that must have address which are compared at receipt which are the functional equivalents of the claim. Regarding claim 12, Patel et al (See Fig. 3, Cols 3 and 4, and claims 1-3) disclose a program means (See Col. 6, lines 35-40) for measuring network latency employing data packets, correlating same and calculating latency based on the data packets substantially as claimed. The differences between the above and the claimed invention are the specific correlation and calculation. Borella et al (See Fig. 2, element 24, Col. 9, line 39 and claim 4) shows explicit timestamp packet program means between two network devices. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement Patel et al because they are well known and conventional functional equivalents of network latency measurement in the prior art. Regarding claim 13, Patel et al

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(See Fig. 3, Cols 3 and 4 , and claims 1-3) disclose a means for measuring network latency employing data packets , correlating same and calculating latency based on the data packets substantially as claimed. The differences between the above and the claimed invention are the specific correlation and calculation. Borella et al (See Fig. 2, element 24, and claim 4) shows explicit timestamp packet between two network devices. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement Patel et al because they are well known and conventional functional equivalents of network latency measurement in the prior art. Regarding claim 14, Patel et al (See Fig. 3, Cols 3 and 4 , and claims 1-3) disclose a method for measuring network latency employing data packets , correlating same and calculating latency based on the data packets substantially as claimed. The differences between the above and the claimed invention are the specific correlation and calculation. Borella et al (See Fig. 2, element 24, and claim 4) shows explicit timestamp packet between two network devices. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement Patel et al because they are well known and conventional functional equivalents of network latency measurement in the prior art. Regarding the checksum limitations of claim 15, both Patel et al or Borella et al would obviously include standard checksum which are always compared in error correction. Regarding the packet limitations

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of claim 16, both Patel et al or Borella et al show plural packets compared at various stages of transit which are the functional equivalents of the claim. Regarding the address limitations of claim 17, both Patel et al or Borella et al show packets that must have address which are compared at receipt which are the functional equivalents of the claim. Regarding claim 18, Patel et al (See Fig. 3, Cols 3 and 4 , and claims 1-3) disclose a method for measuring network latency employing data packets , correlating same and calculating latency based on the data packets substantially as claimed. The differences between the above and the claimed invention are the specific correlation and calculation. Borella et al (See Fig. 2, element 24, and claim 4) shows explicit timestamp packet between two network devices. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement Patel et al because they are well known and conventional functional equivalents of network latency measurement in the prior art.

Any inquiry concerning this communication should be directed to Salvatore Cangialosi at telephone number (703) 305-1837. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas Olms, can be reached at (703) 305-4703.

Any response to this action should be mailed to:

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Commissioner of Patent and Trademarks

Washington, D.C. 20231

or faxed to (703)872-9306

Hand delivered responses should be brought to Crystal Park
II, 2121 Crystal Drive, Arlington, Virginia, Sixth
Floor(Receptionist).

Any inquiry of a general nature or relating to the status of
this application or proceeding should be directed to the
Technology Center 2600 Customer Service Office whose telephone
number is (703) 306-0377.


SALVATORE CANGIALOSI
PRIMARY EXAMINER
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